

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: Enforcement KA-08-06
REF: OCCL: MC

August 12, 2010

REGARDING: Extension Request to Comply with Board Decision
Enforcement File KA-08-06
Unauthorized Landscaping (Trail Building)

LANDOWNER: Secret Beach Properties, LLC
c/o Justin Hughes
Belvedere Tiburon, CA

LOCATION: Kauapea Beach, Namahana, Hanalei, Kaua'i

TMK: (4) 5-2-005:036

PARCEL SIZE: 23.803 acres

SUBZONE: Limited

BACKGROUND

In March 2007 the Office of Conservation and Coastal Lands (OCCL) opened an investigation into the alleged unauthorized cutting of trees and dumping of green waste in the Conservation District. OCCL concluded that a violation had occurred, but was unable to determine if the landowner of the subject parcel had authorized the work or if it had been done by a neighboring rental property owner without the landowner's consent. OCCL decided not to pursue the case, while the landowner agreed to remove the remaining green waste.

In July 2009 OCCL received complaints that the landowner was cutting more trees and building a transverse trail on the subject parcel, TMK (4) 5-2-005:036, above Secret Beach on the North Shore of Kaua'i. Our investigation led us to conclude that the landowner has engaged in unauthorized landscaping in violation of Conservation District Rules. The Board of Land and Natural Resources heard the case on March 11, 2010.

BOARD DECISION

The Board concurred with OCCL's conclusions, and issued the following conditions:

1. That Secret Beach Properties, LLC violated the provisions of Chapter 183C, Hawai'i Revised Statutes (HRS), and Chapter 13-5, Hawai'i Administrative Rules (HAR), by landscaping in the Limited Subzone without a Conservation District Use Permit.
2. That Secret Beach Properties, LLC is fined a minimum of **\$7500**;
3. That Secret Beach Properties, LLC is fined **\$1,500.00** for administrative costs;
4. That Secret Beach Properties, LLC shall pay all fines within sixty (60) days of the date of the Board's action on this matter;
5. That Secret Beach Properties, LLC shall either remediate the trail and restore the land to its original state, or apply for an after-the-fact Conservation District Use Permit (CDUP) for the trail within one hundred sixty (160) days of the Board's action on this matter;
6. That the CDUP for the Trail will need to be approved by the Department, who has the final authority to sign, modify, or deny the permit; and that if the permit is denied the trail will need to be removed and the area restored to its natural state;
7. That no further work shall occur on the subject parcels within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If Secret Beach Properties, LLC conducts further work in the Conservation District portions of the parcels without approval, they will be fined an additional \$2,000 a day; and
8. That in the event of failure of Secret Beach Properties, LLC to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

EXTENSION REQUEST

The applicant has submitted a request for an additional 180 days to comply with condition (5). They state that this will give the landowner time to complete a thorough Environmental Assessment to accompany the application.

The current Board Decision requires that the after-the-fact Conservation District Use Application be submitted by September 1, 2010; the extension would require that the application be submitted by March 1, 2011.

DISCUSSION

OCCL notes that the landowner appears to be in compliance with the other elements of the Board's decision. OCCL has no objections to the extension request.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

OCCL recommends that the Board amend Condition 5 of their decision on Enforcement Case KA-08-06 to read:

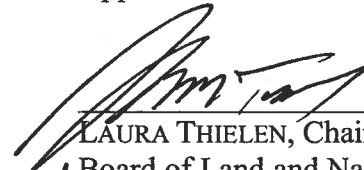
That Secret Beach Properties, LLC shall either remediate the trail and restore the land to its original state, or apply for an after-the-fact Conservation District Use Permit (CDUP) for the trail by March 1, 2011;

Respectfully submitted,



Michael Cain
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA THIELEN, Chairperson
Board of Land and Natural Resources
